

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

)
In the Matter of)
)

Implementation of Section 302 of)
the Telecommunications Act of 1996)

OPEN VIDEO SYSTEMS)
)
_____)

CS Docket No. 96-46

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF
RESIDENTIAL COMMUNICATIONS NETWORK, INC.

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**COMMENTS OF
RESIDENTIAL COMMUNICATIONS NETWORK, INC.**

Residential Communications Network, Inc. ("RCN"), pursuant to Section 1.415 of the Commission's Rules, submits these Comments in response to the Commission's *Notice of Proposed Rulemaking*, released March 11, 1996 in the above captioned proceeding ("*NPRM*" or "*Notice*").¹ RCN submits that the fundamental goal of the Commission as it addresses the many complex policy issues raised by the development of new Open Video System ("OVS") video distribution technology should be flexibility. OVS offers an opportunity for local telephone companies to develop new types of network configurations and technology to deliver video

¹ *In re Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems* and *In re Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 87-266 (Terminated) and CS Docket No. 96-46, FCC 96-99 (released Mar. 11, 1996).

programming to subscribers. As the *Notice* points out, when Congress established the new OVS framework it sought to offer local exchange carriers “broad flexibility in determining how to enter the video marketplace in order to encourage telephone company entry and spur competition and new investment.”² Thus, while the Congress has now permitted local telephone companies (both incumbents and new entrants) to offer exclusive “cable television” services over their networks, it also clearly hoped that, by permitting OVS as another means of entry, telephone companies might also be encouraged to develop platforms which are available to other programmers, thereby increasing even further the range of programming services and packages available to consumers and further spurring competition in the video marketplace.³

RCN has a substantial interest in this proceeding. As an emerging company which plans to provide a diverse package of video and telephone services to end users, it looks forward to having OVS networks available as a means to distribute video programming to its subscribers.⁴ Video programmers like RCN have a substantial interest in the development of more than one OVS operator in a market so that there is a competitive choice available for it to distribute programming.⁵ Such a competitive choice is important not only to provide price competition, but

² *NPRM* at ¶ 2.

³ Telecommunications Act of 1996 (“1996 Act”), § 302(a) (adding new § 651).

⁴ RCN has commenced such operations in the Boston market using the local common carrier telephone transmission network of Metropolitan Fiber Systems/McCourt, Inc. (“MFS”). For purposes of video transmission, MFS has tariffed a “Video Transport Service” pursuant to the Commission’s video dialtone (“VDT”) rules. RCN views OVS, however, as a more flexible structure for telephone companies and programmers to establish market-based distribution platforms.

⁵ Indeed, it would be RCN’s hope that incumbent cable operators will consider taking advantage of the Commission’s OVS rules to offer transmission capacity to programmers

also to encourage development of diverse services offerings and platforms. The availability of multiple competitive telephone networks and services is already having a positive effect in the telephone marketplace, and it is RCN's hope that, as a result of the actions of Congress to establish the OVS concept, and this Commission's rules to implement that concept, local exchange carriers ("LECs") will be encouraged to develop multiple platforms through which RCN can deliver programming and thereby offer subscribers a choice of provider.

As a threshold matter, RCN urges that the Commission adopt implementing rules in a way which encourages telephone companies to develop and implement OVS system. Having been charged by Congress to implement its OVS configuration, the Commission holds the key to whether the OVS will actually become a marketplace reality, either as an offering of the incumbent local exchange carrier or new entrants. In the case of incumbent LECs, the rules will have to encourage many companies who have abandoned their plans to develop video dialtone ("VDT") platforms in favor of developing proprietary cable television distribution systems to rethink that decision. Absent rules which encourage them to develop OVS systems instead of exclusive cable networks, incumbent LECs will at best only provide a single additional cable television company in the market -- and their networks will be unavailable to companies like RCN to provide additional video competition. In effect, all that will be accomplished is a duopoly market -- hardly what the Congress envisioned in developing laws aimed at opening up monopoly telephone and video markets to new competition.

such as RCN. In RCN's view, the more facilities-based competition there is for programmers to use in distributing programming, the more competitors and the broader the geographic area in which competition will exist.

The Commission must also establish, through its rules, an opportunity for new local exchange carriers to develop and offer OVS networks to programmers. RCN submits that, in many ways, such companies are more likely than the incumbent telephone companies to develop OVS offerings, since they do not have the ubiquitous transmission networks available to the incumbent LEC and therefore, as a practical matter, do not have an economically viable option to become a “cable television” provider. The Commission’s *Notice* repeatedly acknowledges the need for a flexible regulatory approach that will foster robust competition. To meet that goal, it must be extremely careful that its rules are developed in a way that permits such non-dominant LECs to develop OVS networks. New entrants that do not currently have ubiquitous infrastructure cannot be expected to undertake the enormous capital expenditure necessary to duplicate that infrastructure on the mere hope that customers will appear to use the system. Therefore, these companies must be allowed to follow a demand driven pattern of development -- building additional capacity where and when there are programmers willing to pay for it.

In sum, RCN submits that it would be highly unfortunate if the Congress’ effort to spur a vigorously competitive video marketplace was stripped of the OVS alternative by narrowly-drafted rules and regulations which unnecessarily limit the ability of telephone companies to develop, within the principles established by Congress, new and innovative distribution platforms. Given that OVS is not yet two months old, and the implementing rules are not yet promulgated, it is not clear to anyone involved how it will develop and be marketed initially, let alone over time. What is clear, however, is that regulations that attempt to predict network configuration and market demand, and which develop a regulatory framework which only encompasses that prediction, could result in eliminating the chance of any OVS development at

all. The Commission has recognized that its mandate from Congress is to implement the statutes in a “way that will promote Congress’ goals of flexible market entry, enhanced competition, streamlined regulation, diversity of programming choices, investment in infrastructure and technology, and increased consumer choice.”⁶ RCN urges that the Commission keep those goals closely in mind as it develops its rules herein.

Respectfully submitted,



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⁶ NPRM at ¶ 4.